regulate cable rates. The federal government cannot bestow upon the cities what the states have chosen to deny to them.

The text of the Act itself demonstrates that the legal authority of local franchise authorities to regulate cable rates is not granted by the Act. Section 623(a)(3)(B) of the Act mandates that local authorities certify to the Commission that they have "the legal authority to adopt" the rate regulations. Act, § 623(a)(3)(B). That this language is included within the statute illustrates that the power to rate regulate is not derived from the Act itself. To find otherwise would make this provision meaningless.[32] Similarly, Section 623(a)(4)(B) also would be rendered superfluous if the Act were, in fact, the source of legal authority. Section 623(a)(4)(B) provides that a certification filed by a franchising authority will not become effective if the Commission finds that "the franchising authority does not have the legal authority" to regulate rates. Act, § 623(a)(4)(B). Legal authority would not be subject to question if the Act itself were its source. Thus, the statutory language of the Act is inconsistent with a proposition that the Act empowers local authorities to regulate rates.

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32 As a general rule of statutory construction advises that effect be given "if possible, to every clause and word of a statute," the Commission should find that the Act does not grant authority. See Montclair v. Ramsdell, 107 U.S. 147, 152 (1883).

The inability of the Act to confer authority on local governments is evinced further through examination of the history of cable regulation by federal, state and local governments. Indeed, two decades ago the Commission promulgated rules that attempted to require local authorities to regulate rates for services regularly furnished to all subscribers, and included a requirement that local franchising authorities institute programs for rate review and, if necessary, rate adjustments. See Amendment of Rules Relative to Federal, State and Local Relationships in CATV, 36 F.C.C. 2d 143, 204-211 (1972). Eventually, the mandatory aspect of the rule posed problems for local authorities which did not possess authority to regulate rates under state law. See Amendment of Rules Regarding Regulation of Cable Television System Regular Subscriber Rates, 57 F.C.C. 2d 368, 369 (1976). In questioning the appropriateness of the rule, the Commission noted that its "rules do not, and can not give authority to franchising bodies when that authority does not exist under State law. Rather, [its] rules and guidelines only apply when and if the authority is exercised pursuant to existing powers." Id. The federal rule mandating local authorities to regulate rates was subsequently deleted. See Amendment of Rules Regarding the Regulation of Cable Television System Regular Subscriber Rates, 60 F.C.C. 2d 672 (1976). Recognizing that several local authorities did not have authorization to control rates, the

Commission suggested that rate regulation problems be resolved through local processes.

> We strongly encourage franchising authorities and prospective franchisees to fully consider all aspects of the ratemaking procedure and, where possible, anticipate the problems that may arise and provide the means of resolving them in the franchise itself. If the franchise authority elects to regulate rates, we encourage the parties to the franchise to not only stipulate any mechanism for rate setting but also to specify what documentation will be deemed relevant and reasonably capable of being produced, which of the parties will bear the cost of providing it, a period of time within which the franchising authority will reach its decision, procedures to be used to resolve any disputes arising in the course of this process, and so forth. This will enhance the effect of our action today, by assuring that most, if not all, subscriber rate problems may be effectively settled through local processes.

Id. at 685. Local franchising processes and procedures should once again govern any local ratemaking, as discussed below.

### B. Detailed Regulatory Procedures Were Not Contemplated

The statutory provision requiring the FCC to establish federal procedures to control local rate efforts by no means requires the detailed elaboration of administrative tools that the locals would somehow be encouraged, or even compelled, to deploy. Most importantly, the Commission's implementation must eschew the various tariff review mechanisms discussed in the Notice.

The Act itself requires that the Commission's basic service tier regulations "seek to reduce the administrative

burdens on subscribers, cable operators, franchising authorities, and the Commission." Act, § 623(b)(2)(A). It also continues to prohibit, as it has since 1984, common carrier regulation of cable service offerings. Act, § 621(c), 47 U.S.C. § 541(c). Plainly, no regulatory versions of the Administrative Procedure Act in full text were envisioned by the 102nd Congress to be imposed upon each city and town either. Nor did Congress envision the procedural devices of the tariffing sections of Title II of the Communications Act to be replicated here. See, e.g., House Report at 83 ("It is not the Committee's intention to replicate Title II regulation").

Consistent with the legal rights of operators, and the consumer protection rights confirmed in the Act, the most minimal procedural obligations were anticipated -- indeed, were deemed the desirable course. The Conference Report thus explains that the changes undertaken in conference were "to encourage the Commission to simplify the regulatory process." Conference Report at 23.

Both the House and Senate versions contained provisions amending the 1984 Act with respect to the local governments' authority to rate regulate. In returning most of the cable industry to a rate-regulated environment, Congress sought some federal constraints on the exercise of local regulatory powers. The overreaching by the cities prior to 1984 undoubtedly had made Congress reluctant to simply give free rein back to them less than a decade later. In

establishing jurisdiction in the Commission to supervise the exercise of the local governments' rate regulatory authority, Congress sought to confine and avoid the earlier problems of local rate regulation. The Senate Report succinctly stated:

> The Committee also recognizes that franchising authorities have a large stake in the operation of cable systems. The legislation thus permits franchising authorities to retain this authority so long as they abide by the FCC's rules.

Senate Report at 19.

In confining the exercise of local power, however, Congress did not intend to impose a highly formalized structure. Rather, it was dictated by Congress that the FCC rules that would bind the locals in fact not require elaborate or complex procedures, especially in small jurisdictions where resources are limited. In its cost estimates to the Senate Committee, the Congressional Budget Office asserted that "the requirements in the bill are not likely to result in significant costs for individual jurisdictions." Senate Report at 67. Indeed, only $1-2 million was estimated by the Congressional Budget Office to be incurred by franchising authorities nationwide. This surprisingly low figure was expressly based upon the assumption that 60% of these authorities would undertake rate review even under the 1984 Act in light of the FCC's alterations to the "effective competition" standard contained in that Act. Id. at 68. Plainly, there was no contemplation of procedures involving such complex matters as rate suspensions, rate rejections,

interim prescriptions, final prescriptions, and the time-consuming, elaborate hearing procedures which would lawfully be required to accompany them.[33]

The concept that local procedures would be minimally proscribed by federal law but otherwise left to local choice was an unsurprising choice for Congress: it was recommended by the FCC itself in its 1990 Report to Congress. The Commission explained its view of how the legislative proposals then pending could best be made to work:

> With regard to the ratemaking process where effective competition does not yet exist, it is our view that federal standards should guide local ratemaking to assure that nonfederal power is exercised reasonably, but the process of rate regulation should be left to municipalities or states. Bifurcation of the standard setting and rate setting process between federal and nonfederal jurisdictions will best assure that the regulatory interests of each will be met.[34]

1. The Procedures Should Not Be Modelled After Tariff Review Procedures

It is critical to appreciate that, as a matter of policy, the Commission should avoid to the fullest extent possible inducing the local jurisdictions to adopt any of the paraphernalia of utility regulation. It has already been

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33 In fact, the Conference Committee rejected a provision in S.12 which would have enabled either the FCC or a certificated franchising authority to disapprove proposed rate increases. Conference Report at 59-64.

34 Competition, Rate Regulation and the Commission's Policies Relating to the Provision of Cable Television Service, 67 Rad. Reg. 1771, 1814 (1990).

discussed at length why the public interest is disserved by burdening the cable industry and cable consumers with the direct and indirect costs of cost-based regulation. These concerns apply with equal force to the procedural accouterments of utility regulation.

Requiring as a matter of federal law local governmental prior approval for rate changes serves no legitimate purpose. Cable operators have little incentive to price unreasonably once reasonableness has been established as a matter of federal law. In contrast, prior approval authority in the hands of local politicians is almost always subject to an incentive to prevent any increase -- no matter how justified or clearly "reasonable" under FCC regulations. There is indeed no incentive on the part of the franchising authority to allow such increases, for the new legislation appears to grant to government officials blanket immunity from damages for "any claim ... arising from the regulation of cable service." Act, § 635A (a). And where there can be legitimate disagreement as to whether a particular change results in a reasonable rate, it should not be assumed that all rights have been forfeited over to the franchising authority. Absent a clear provision under state law or within the franchise itself, the cable operator should remain free to set its prices and defend them in subsequent administrative proceedings.

Finally, even if Congress had attempted to empower the local authorities in this manner, it could not do so with any

lawful effect. Congress lacks such ability, and a fortiori, so does this agency. The federal government cannot empower the cities to do anything, for the latter are exclusively the agents of the individual, sovereign states. Further, the federal power of preemption is exclusively negative; it cannot command the states, nevertheless the agents of the states, to take affirmative action. See discussion in section IV(A), supra.

The framework for enforcement of the Act's rate regulation requirements, beyond those aspects specifically addressed in the Act itself, should be resolved by the local law, including the franchise agreement.

### 2. Franchising Authorities Should Determine Initially Whether Effective Competition Exists

As a matter of sheer practicalities, TCI supports the suggestion that local franchising authorities make the initial determination regarding the presence or absence of effective competition. Notice, at ¶ 17. The initial determination will need to be made as part of the certification process for every certification application filed with the FCC. These, of course, need to be initially processed in 30 days, pursuant to statute. Because and only because this effort cannot be reasonably undertaken initially by the FCC within that timeframe, TCI agrees that the initial determination can be made by the franchise authority as part of its certification.

In this arrangement, however, it is critical to recognize that the franchise authority is acting as both "prosecutor and judge." It is being delegated the initial responsibility to make an assessment in which it has a very large stake. Two conclusions follow from this: first, any challenge to this determination before the FCC must be reviewed de novo, without the FCC or the cable operator being bound by the findings or the "record." Second, any future petitions to make effective competition findings must be made at the FCC level. These petitions will flow in over a period of years, and thus the exigencies of timing that may warrant vesting initial responsibility with the local governments above do not apply.

### 3. The Commission Must Establish a Streamlined Certification Form and Processing Scheme

TCI supports the proposal for a simple certification process. Notice, at ¶ 19. Consistent with this approach, the Commission should require franchising authorities to provide local cable operators with 10 days notice in advance of its filing of a certification application with the Commission. TCI therefore suggests that the proposed certification form should be amended to include a representation from the franchising authority that such advance notice had been provided. This simple step may dramatically reduce the Commission's processing burden as local parties may be able to resolve rate disputes on an informal basis without ever burdening the Commission.

Absent protest by the operator to either the local franchising authority or to the FCC, certification should issue. The operator's silence in this process should not be construed as a waiver of its right to contest the certification subsequently. Initially, it may be difficult for cable operators to evaluate fully and respond to certification notifications in a timely fashion.[35]

Under TCI's proposal, the vast majority of certification applications will likely go unchallenged and can become effective within the 30 day statutory period. But the volume of activity surrounding the implementation of the Act's rate regulations will likely make it impossible for the FCC to evaluate any challenges that are made within the 30 day period. At best, this means that some of the certifications will be questionable. In open recognition of this problem, the Commission should permit subsequent challenges to be made and evaluated on a de novo basis, without any presumption in favor of a "certified" cable franchisor. See Section IV(B)(2), supra.

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35 The Notice asks whether multiple franchising authorities can certify and exercise joint regulatory jurisdiction. Notice, at ¶ 21. Franchise agreements are entered into on a community-by-community basis, and it is on that basis they should be administered. The sole exception to that rule should be in cases where the initial franchise encompasses multiple communities or where the cable operator voluntarily consents to a subsequent consolidation of regulatory authority.

### 4. The Commission Should Impose Only the Statutory Minimum for Regulatory Procedures

The new rules must provide for the standards and procedures required by Sections 623(b)(5) and (6), but need not go further. These sections require rules governing: how franchisors may enforce cable operator compliance with the basic rate regulation standards (§ 623(b)(5)(A)); how to resolve disputes expeditiously (§ 623(b)(5)(B)); standards to prevent unreasonable charges for subscriber changes to services and/or equipment (§ 623(b)(5)(C)); standards to ensure that subscribers receive notice of the availability of a basic tier (§ 623(b)(5)(D)); and, finally, a rule to require 30-day notice of a basic tier price increase (§ 623(b)(6)).

After proper amendment, the provisions already contained in Commission Rule § 76.33(b) ensuring (1) public notice and an opportunity to be heard, (2) decisions in writing by the franchising authority, and (3) the opportunity to petition the Commission for special relief, will serve as appropriate tools for implementing the new statutory design. Rule 76.33(b) will need to be amended further to reflect the substantive standards required under § 623(b)(5)(C), (D) and § 623(b)(6).

With respect to the Commission's obligations under § 623(b)(5)(D), the Notice proposes to model notice requirements for basic service tier increases after Rule 76.66(c), the rule governing notice to subscribers of the

availability of A/B switches. Notice, at ¶ 89. The proposal to require an initial notice obligation which would repeat annually using "whatever language [cable operators] deem appropriate to convey" the fact that a basic service tier is available, implements the statutory requirement and should be adopted. See, e.g., 47 C.F.R. § 76.66. TCI also agrees that providing initial written notice to all existing subscribers within 90 days or three billing cycles (from the effective date of the rules) is reasonable.[36]

5. Enforcement of Basic Service Regulation

The Notice seeks comment on whether local courts, rather than the Commission, might be the appropriate forum for appeals of local rate decisions. Notice, at ¶ 86. The statute expressly requires the Commission to hear such appeals. See Act, § 623(a)(5). Section 623(a)(5) provides, "Upon petition by a cable operator or other interested party, the Commission shall review the regulation of cable system rates by a franchising authority.....[and] grant appropriate relief." Id. The courts can review the Commission's decision in this

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36 Notice, at ¶ 89. The suggestion that "any sales information" at or prior to installation recite the availability of basic service is inappropriate, however, especially once it is understood that some of that information originates from third parties. In any event, operators should have the freedom to selectively promote certain services and program packages, without describing every service offering. Notice given when a subscriber first signs up for service should suffice for these purposes.

rulemaking and in subsequent implementation cases, but they lack jurisdiction to directly review a franchising authority's compliance with the Commission's rate regulation standards.

C. Cable Programming Service Regulatory Procedures

The procedures that will govern regulation of the cable programming service tier similarly must be minimal. For all cable operators whose rates fall within the safe harbor of the industry norms, the Commission must assure that the safe harbor remains safe. It should automatically dismiss any complaint regarding the rates of any cable system that lies within the norm. In essence, a demonstration of exceeding the norm by the set federal standard is required to establish subject matter jurisdiction; without such a showing there is no matter for the Commission to hear. For systems outside the safe harbor, subject matter jurisdiction exists, as does an opportunity for dissatisfied local subscribers to file a complaint with the FCC.

Any such complaint must be filed "within a reasonable period of time." Act, § 623(c)(3). This section in effect gives the FCC authority to establish an administrative "statute of limitations" for purposes of these complaints. The legislative history gives no guidance to the agency as to the length of time Congress intended to deem reasonable. However, a certain amount of guidance can be gleaned from the Act itself. The rate regulation provisions already require cable

operators to provide 30-days notice for basic service tier increases. See Act, § 623(b)(6). If a thirty day period is deemed adequate notification time for the most comprehensively regulated service, then plainly it should be deemed adequate for programming which is only regulated in the exception. Moreover, the complaint process mandated by Congress is deliberately streamlined to facilitate the filing of complaints without the need to hire an attorney,[37] thereby decreasing substantially the need for a lengthy period of time between notice and filing time. The only question which remains, then, is how to establish "notice" as the starting time for the 30 days. We respectfully submit that the time period should run from the date of publication by the Commission of the "bad actor" analysis. Publication of the "bad actor" analysis will notify subscribers of their subject matter jurisdiction. TCI supports the Notice's tentative view that 30 days from notice is sufficient time.

Where a complaint is determined by the FCC to state a cause of action, the operator should have a comparable 30 days response time. The operator at that time should have the choice to realign its rates within the industry norms. Absent doing so, it must demonstrate just cause for the apparent high rates. These proceedings would be dictated by the provisions of the Administrative Procedure Act. Similarly, access to

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37 Conference Report at 64.

confidential information can be governed by existing FCC rules providing for confidentiality orders. See 47 C.F.R. §§ 0.457, 0.459, 0.460.

The Commission should also promulgate rules to account for the possibility, indeed likelihood, that numerous complaints against the same cable system for the same rates will be filed. The FCC should provide for consolidation of such complaints to avoid relitigation of the same issues. Similarly, collateral estoppel concepts should be built into any final resolution of the complaints.

The Notice further proposes to find that the Commission has refund authority pursuant to Section 623(c)(1)(C), and further seeks comment on how to implement such authority. Notice, at ¶ 108. Where cable programming rates have been deemed unreasonable, "a prospective percentage reduction in the unreasonable service rate to cover the cumulative overcharge ... sent to the class of subscribers that had been unjustly charged"[38] appears to be the only workable type of refund that can be ordered on a system-wide basis.

## V. PROVISIONS APPLICABLE TO CABLE SERVICE GENERALLY

### A. Uniform Rate Structure

The Act states that cable operators shall have a uniform "rate structure throughout the geographic area in which

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38 Id.

cable service is provided over its cable system." Act, § 623(d). It is critical to note at the outset the actual application of this provision: it requires uniformity of rate structures, not rate levels. Different services and different customers will have different cost structures, thereby justifying different rate structures and rate levels. The distinction is a traditional element of rate regulation, and must not be ignored here. Thus, a uniform rate structure mandate does not mean that a cable operator is required to charge the same rates, just that the service categories and other charge components within service categories be uniform. Cf. Private Line Rate Structures, 97 F.C.C.2d 923 (1984).

TCI supports the Notice's construction that the requirement be read directly in conjunction with Section 623(e). Notice, at ¶ 113. Section 623(e) authorizes but does not compel regulatory authorities to prohibit discrimination. Even in the face of a discrimination ban, cable operators should be allowed to maintain bona fide service categories. As noted above, the different cost structures of different categories of customers justify such a rate structure. This is particularly true for multiple subscriber agreements, including rates charged to seasonal or transient customers (such as the hotel/motel industry); long term contracts to serve a multiple dwelling unit ("MDU", i.e., an apartment building) or a planned unit development ("PUD" i.e., planned suburban community). Cable operators negotiate these

service contracts with commercial businesses, MDU management companies and developers. By their very nature, these sophisticated commercial situations differ from the cable operator's relationship with individual subscribers. The potential volume of subscriptions they may bring warrant altered structures and/or reduced charges by virtue of lowered transactions costs. Cable operators must be allowed to price to reflect these efficiencies.[39]

The Notice also questions whether a rate structure must be uniform within all contiguous communities served by a single headend or simply within a franchise area. Notice, at ¶¶ 114-115. A uniform rate structure across contiguous communities would be inconsistent with the Act. The Act simply requires that structures be uniform within each single community.

Section 602(7) of the Act defines the term cable system as a "facility . . . within a community" which delivers video programming to multiple subscribers. Act, § 602(7). As the uniform rate structure provision requires uniformity only in those areas where service is provided by the cable system, uniformity is required only within each community that one

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39 Independent of the need to permit volume discounts, an exception must be carved out to grandfather existing long term contracts such as those with MDUs and PUDs. Without such an exception, cable operators would not only lose a significant source of revenue, but could also be subject to lawsuits for breach of contract.

single cable facility serves. This statutory interpretation is consistent with the Act's vesting of basic rate authority in local franchising authorities, which vary from community to community. It is also necessary to account for the increasing phenomenon of interconnecting cable systems. For example, different franchising authorities in adjacent geographic areas may impose various types of requirements specific to one franchise even though the same cable system or interconnected cable systems serve that area. Such varying requirements may include a different number of PEG channels and associated PEG obligations, underground cabling, etc. A requirement that interconnected systems have uniform rate structures simply by operation of the fact of interconnection would serve no purpose; indeed, it would impede the efficiencies captured in interconnection by discouraging the practice altogether.

The legislative history confirms a congressional intent to address only the occasional problem of neighborhood discounting within communities. This concern was already reflected in the 1984 Act's "redlining" prohibition, where denial of service to select areas of a franchise is foreclosed. Act, § 621(a)(3). The new provision is in aid of that section, since a standardized rate structure will aid to reveal rate level discriminations that are inconsistent with the Act. There is no reason to read the uniform rate structure requirement more broadly.

B. Negative Option/Evasion

In recent months, a number of operators have reconfigured their offerings in an effort to commence operations under the new regime, most especially, providing the option of low cost basic service. Both press reports and public statements by local officials have criticized these efforts, suggesting they somehow reflect an intent to evade Congressional directives. The launching of a "broadcast basic" service tier, which TCI publicly announced earlier this month, is consistent with both the letter and the spirit of the Act.

The Act contains minimum requirements for the basic tier but leaves it to an operator's discretion to add signals. See Act, § 623(b)(7). There is also a clear preference for low cost basic, since additions by the operator are subject to regulation. Operators who act consistently with this preference should be protected from either local regulatory or private efforts to force cable networks down onto basic.

One form these efforts may take is mistaken reliance on Section 623(f). This restricts "negative option" marketing. The section states:

> A cable operator shall not charge a subscriber for any service or equipment that the subscriber has not affirmatively requested by name. For purposes of this subsection, a subscriber's failure to refuse a cable operator's proposal to provide such service or equipment shall not be deemed to be an affirmative request for such service or equipment.

Act, § 623(f). The restriction was explained on the Senate

floor as a reaction to the initial roll-out by TCI of a new mini-pay service where existing subscribers were to be billed for the new service if, after a free trial and several notices, they did not reject the service. In response to that effort, some state enforcement authorities took the position that the cable industry crossed into unfair trade practices with such trial offers. As a result of negative public reaction, and before any customers were billed for the service, TCI reversed this marketing approach. The provision in 623(f) is designed to reach only this type of activity; the Commission should not look to more complex, unwieldy application of this language.

Notwithstanding the plain intent behind the section, some local authorities are beginning to exploit Section 623(f) to challenge the unbundling of tiers, converters and program guides from "basic" if the operator did not automatically downgrade and remarket customers to retain the new options.[40] The theory is that until a lower cost basic service is offered, the cable operator cannot presume that the subscriber paying for expanded service "affirmatively" wants it. However, a requirement that an operator automatically downgrade silent customers, and remarket them to their present level of service would create enormous customer inconvenience. Given that such

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40 An example is the State of Wisconsin, which is currently pressing for a State trade practice regulation requiring an operator to automatically downgrade customers to the lowest level of service upon the launch of such a service.

extreme interpretations vastly exceed the narrow intent of the section, they should be readily dismissed.

In order to prevent erroneous applications of the negative option prohibition, the Commission must expressly clarify that the unbundling, retiering and repackaging of services and equipment are not within the negative option prohibition. The goal of the negative option provision, to protect customers from charges for unsolicited services, is simply inapposite here.[41]

So long as these changes are revenue neutral (and holding quality constant), they implicate neither the negative option nor the evasion prohibition. Revenue neutrality may be somewhat difficult to measure when equipment is repriced. For example, the 1992 price for a remote capable converter might be 0, and for a handheld remote $4.00. The 1993 price might be $3.50 (converter)/$0.50 (handheld remote). From the operator's point of view, the change is neutral. And to a customer with both converter and remote, the reallocation is also neutral. But to a customer with only a converter, the reallocation looks like a price increase. In such circumstances, "neutrality"

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41 The Conference Report emphasizes that "this provision is not intended to apply to changes in the mix of programming services that are included in various tiers of cable service." Conference Report at 65.

should be measured against a subscriber who receives all of the affected services or equipment.[42]

Franchising authorities may seek to force additional programming onto the basic tier directly. Some pre-1984 franchises specified that particular cable networks should be carried on basic, but those networks were retiered under the 1984 Act. Some post-1984 franchises were crafted to try to circumvent Section 624(b)'s prohibition on requirements for particular video services. Such agreements may specify that basic shall be a minimum number of channels, thus compelling operators to maintain costly cable networks on basic. Efforts to enforce such clauses defeat the terms of the 1984 Cable Act (left undisturbed by the 1992 Act) and undermine the purpose of the 1992 Cable Act to provide low cost basic service. These clauses should be deemed preempted and void. See Section 636(c), 47 U.S.C. § 556.

C. Small System Burdens

TCI supports Commission efforts to minimize the regulatory burdens imposed on "small system" operators. Notice, at ¶ 128-33. As noted above, the Commission's regulatory process for all operators should be minimal, but the

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42 Of course, where the rates are subject to regulation, the new unbundled rates are also subject to those regulations.

need for a streamlined process is particularly important in the case of small systems.

Rate regulation poses special problems for small operators. In some instances, even modest regulatory requirements can strain available resources and personnel and increase costs. Contrary to the suggestion in the Notice, however, these problems do not disappear when a small system is owned by a MSO. Under the Act, the comprehensive regulation will be performed at the local level, thereby requiring local personnel to respond in each franchise area. Each individual system will confront a particular set of issues. While some issues may be addressed at the FCC and at corporate headquarters, many costly issues and controversies will remain local. There is simply no basis in fact or under the statute for the Commission to distinguish among small systems based on their ownership.

D. Reports on Average Price

The Act instructs the Commission to publish annually statistical data comparing the rates for basic cable service, cable programming service, and equipment offered by systems subject to effective competition. Act, § 623(k). The Notice notes the problems inherent in gathering such data from trade publications. Notice, at ¶ 138. While not anxious to increase the already substantial burdens on both the industry and on the Commission, TCI agrees that reliance on trade

publications for such data is inappropriate. The Commission should collect data directly from cable operators, but should restrict the breadth of its inquiry and the number of systems involved.

As the Notice properly notes, it is not necessary for the Commission to secure data from the entire cable industry in order to develop a statistically reliable report on cable rates. Id. at ¶ 139. A statistically meaningful sample will provide adequate information on every variety of cable system. As few systems currently face "effective competition" under the Act's definitions, TCI agrees that the sample should include a sufficient number of these competitive systems. Id.

E. Effective Date

Sections 623(b)(2) and (c)(1) of the Act require that the Commission establish regulations to implement its rate regulation provisions within 180 days of the Act's enactment. Act, § 623(b)(2), (c)(1). The Commission has tentatively concluded that, while it is required to adopt implementing rules by April 3, 1993, all implementing steps need not be completed by that date. Notice, at ¶ 143. In fact, a transition period, during which cable operators can adjust to the new regulatory reality, is essential. The Act's regulatory scheme undoubtedly will warrant profound and fundamental changes. While TCI has begun to implement these changes by way of retiering to create a "broadcast basic" tier,

reconfigurations for anti-buy-through, etc., the remaining changes cannot, and should not, be made in a flash-cut manner and frozen thereafter in place. To make the required statutory adjustments, TCI proposes a two-stage transition process. This would permit an interim set of rules to govern rates until final rules could be promulgated.

Any benchmark chosen by the Commission on April 3, 1993, will be derived on the basis of pre-regulation data. These data will not reflect the enormous changes which will be undertaken by cable operators to conform their businesses to the new regime, including retiering, unbundling of services, unbundling of services and equipment, repricing, bill reformatting, other subscriber information, etc. The reality that data do not now exist from which to measure established rate levels mandates a transition.

During the transition, cable operators would make their initial adjustments under interim rules. Over a period of time, the industry could be expected to reach normalization. Permanent rate levels, based on new data, could then be established and may take effect on January 1, 1995. Otherwise, the Commission would be developing rates for one time period based on rates that existed under a prior rate structure. The Commission has previously recognized transition problems and appropriately phased-in new regulations to accommodate them. See Transport Rate Structure and Pricing, 7 F.C.C. Rcd 7006 (1992).